

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Magnesium Machine, LLC et al.,)	Case No. 1:19-cv-2818
)	
Plaintiffs,)	
)	Judge Donald C. Nugent
vs.)	
)	
Terves, LLC et al.,)	
)	
Defendants.)	

Affidavit of Matthew J. Cavanagh

I, Matthew J. Cavanagh, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify to them.
2. I am a member at the Cleveland, Ohio, law offices of McDonald Hopkins LLC (“McDonald Hopkins”).
3. I am licensed to practice law in the state of Ohio, before the United States District Court for the Northern District of Ohio, before various other federal courts, and before the United States Patent and Trademark Office.
4. I am one of the attorneys representing defendant Terves, LLC in this case.
5. I submit this declaration in support of the amount of attorney fees requested by Terves in this action.
6. Terves incurred the following legal fees defending against this lawsuit for which it seeks recovery:

<i>Total Fees Sought</i>				
<i>Attorney</i>	<i>Position</i>	<i>Hours Billed</i>	<i>Rate</i>	<i>Total Fees</i>
Matthew Cavanagh	Member	182.2	\$ 475	\$ 86,545
David Cupar	Member	4.3	\$ 570	\$ 2,451
Andrew Gordon-Seifert	Associate	8.9	\$ 350	\$ 3,115
<i>TOTAL</i>		195.4	\$471.36	\$ 92,111

7. In 2005, I obtained my law degree from Case Western Reserve University Law School in Cleveland, Ohio, and have practiced law continuously since then.

8. I have experience representing clients in a variety of civil litigation matters, and I specialize in intellectual property litigation.

9. I am billing Terves at my standard rate of \$475 per hour in this action.

10. My standard billing rate is reasonable and competitive among attorneys in the field of intellectual property litigation in Cleveland, Ohio with my level of experience.

11. As evidence that my firm's billing rates and legal fees are reasonable for this geographic area and the subject matter of this case, I have reviewed the *American Intellectual Property Law Association (AIPLA) 2019 Report of the Economic Survey* (the "AIPLA Report"). A true copy of cited excerpts from the AIPLA Report is attached as Exhibit B.

12. The AIPLA Report is an economic survey developed and managed by the Law Practice Management Committee of the American Intellectual Property Law Association (AIPLA) that collects, analyzes and reports billing rate and typical charges for certain intellectual property legal services. U.S. Courts of Appeals and U.S. District Courts have relied upon the AIPLA Economic Surveys to gauge the reasonableness of attorneys' fees

sought in intellectual property litigation. *See, e.g., View Eng'g, Inc. v. Robotic Vision Sys., Inc.*, 208 F.3d 981, 987-88 (Fed. Cir. 2000) (approving lodestar calculation by district court that used AIPLA survey); *Mathis v. Spears*, 857 F.2d 749, 755-256 (Fed. Cir. 1988) (district court's conclusion that billing rates "generally corresponded to those presented in the [AIPLA] surveys and were [thus] reasonable in view of those surveys" was, "as the law makes clear," appropriate).

13. I am an intellectual property litigator, registered patent attorney, and member at McDonald Hopkins and have been practicing law since 2005. The average hourly billing rate in 2018 for a private firm partner in Other Central (which encompasses Ohio) ranges from \$283-\$646/hour (10-90% percentiles). (Ex. B at I-25.) The average hourly billing rate in 2018 for a private firm partner with 10-14 years of experience is \$280-\$668/hour (10-90% percentiles). (*Id.*) My billing rate of \$475 per hour falls within both ranges and is therefore reasonable.

14. David Cupar also represented Terves in this matter. Mr. Cupar billed his time on this matter at an average rate of \$570 per hour. Mr. Cupar is a 1999 graduate of the Case Western Reserve University School of Law. He is a registered patent attorney and a litigator. He is a member at McDonald Hopkins and chairs the Intellectual Property Department. According to the AIPLA Report, the average hourly billing rate in 2018 for a private firm partner in Other Central (which encompasses Ohio) ranges from \$283-\$646/hour (10-90% percentiles). (Ex. B at I-25.) The average hourly billing rate in 2018 for a private firm partner with 15-24 years of experience is \$325-\$750/hour (10-90% percentiles).

(*Id.*) Mr. Cupar's billing rate of \$570 per hour falls within these ranges and is therefore reasonable.

15. Andrew Gordon-Seifert also represents Terves in this matter. Mr. Gordon-Seifert billed his services in this action at an average rate of \$350 per hour. Mr. Gordon-Seifert graduated from the Ohio State University in 2014 and is an associate and intellectual property litigator in the Cleveland office of McDonald Hopkins. Mr. Gordon-Seifert's rate falls within the range of average hourly billing rates reported in 2018 for a private firm, partner-track attorney with 5-6 years of experience: \$252-\$719/hour (10-90% percentiles). It also falls within the range of average hourly billing rates reported in 2018 for a private firm, partner-track attorney with fewer than 5 years of intellectual property law experience: \$222-\$575/hour (10-90% percentiles). (Ex. B at I-42.) Thus, Mr. Gordon-Seifert's rate for this matter was reasonable.

16. McDonald Hopkins issued monthly invoices to Terves, and those invoices contained printouts from the firm's billing database that provide the billing details for each attorney. Attached as Exhibit A are copies of the McDonald Hopkins' invoices to Terves for its legal work on this case. In preparing this declaration, I carefully reviewed the firm's time-recording, billing records and invoices issued to Terves on this matter.

17. I redacted in black from the invoices those time entries for which Terves does not seek recovery. Most of those time entries relate to Terves' patent infringement lawsuit against MMP's supplier, Ecometal Inc. McDonald Hopkins billed Terves for both cases under the same matter number in the same invoices. Where a time entry on a particular date includes tasks related to the trade secret case and to the patent case, I

blacked-out the portion related to the patent case, crossed-out the total time charged for that entry, and typed the amount of the total that is attributable to the trade secret case below the crossed-out amounts.

18. I redacted in red from the invoices a handful of task descriptions within the entries that relate to the trade secret case but contain privileged work-product or attorney-client communications.

19. Below is a table that identifies by line item each time entry for which Terves seeks recovery. All of those time entries are corroborated by the McDonald Hopkins' invoices attached as Exhibit A, except for the four September 2020 time entries. McDonald Hopkins has not yet issued an invoice to Terves for September billings. Consequently, I obtained the four September 2020 time entries directly from McDonald Hopkins' billing software that tracks time entries that are entered in the system but not yet billed.

Ex Parte Seizure Order

<i>Date</i>	<i>Attorney</i>	<i>Task</i>	<i>Hours</i>	<i>Rate</i>	<i>Total</i>
12/18/2019	M. Cavanagh	prep for hearing	8.0	\$475	\$3,800.00
12/19/2019	M. Cavanagh	attend hearing	7.9	\$475	\$3,752.50
12/20/2019	M. Cavanagh	address sealing of documents re seizure hearing	0.4	\$475	\$190.00
		TOTAL	16.3	\$475	\$7,742.50

Motion to Dismiss

<i>Date</i>	<i>Attorney</i>	<i>Task</i>	<i>Hours</i>	<i>Rate</i>	<i>Total</i>
12/23/2019	M. Cavanagh	review summons issue/plan defense strategy	0.5	\$475	\$237.50
12/27/2019	M. Cavanagh	legal research re lit privilege; summons issue	1.6	\$475	\$760.00
1/3/2020	A. Gordon-Seifert	legal research re lit privilege	0.4	\$350	\$140.00
1/5/2020	A. Gordon-Seifert	legal research re lit privilege	0.8	\$350	\$280.00
1/6/2020	A. Gordon-Seifert	legal research re lit privilege	0.4	\$350	\$140.00
1/7/2020	D. Cupar	research re validity of trade secret	2.2	\$570	\$1,254.00
1/7/2020	M. Cavanagh	legal research re trade secret/lit privilege	2.0	\$475	\$950.00
1/7/2020	A. Gordon-Seifert	legal research re MTD	2.6	\$350	\$910.00
1/8/2020	D. Cupar	trade secret analysis	1.0	\$570	\$570.00
1/9/2020	A. Gordon-Seifert	MTD legal research	1.1	\$350	\$385.00
1/13/2020	M. Cavanagh	email opposing counsel re PI threat	0.5	\$475	\$237.50
1/17/2020	M. Cavanagh	legal research re MTD	6.0	\$475	\$2,850.00
1/20/2020	M. Cavanagh	legal research re MTD	0.5	\$475	\$237.50
1/27/2020	M. Cavanagh	draft MTD	1.8	\$475	\$855.00
1/30/2020	M. Cavanagh	strategy re MTD	0.3	\$475	\$142.50
2/11/2020	M. Cavanagh	draft MTD	2.7	\$475	\$1,282.50
2/20/2020	M. Cavanagh	prep for CMC	0.8	\$475	\$380.00
2/26/2020	M. Cavanagh	draft MTD	3.2	\$475	\$1,520.00
2/27/2020	M. Cavanagh	draft MTD	4.2	\$475	\$1,995.00
2/28/2020	M. Cavanagh	attend CMC	2.8	\$475	\$1,330.00
4/7/2020	M. Cavanagh	prepare MTD district court case	3.0	\$475	\$1,425.00
5/1/2020	M. Cavanagh	prepare MTD district court case	0.5	\$475	\$237.50
5/5/2020	M. Cavanagh	prepare MTD district court case	3.1	\$475	\$1,472.50
5/11/2020	M. Cavanagh	prepare MTD district court case	3.7	\$475	\$1,757.50
6/10/2020	M. Cavanagh	review MMP opp to MTD	1.4	\$475	\$665.00
6/22/2020	M. Cavanagh	reply brief re MTD	2.7	\$475	\$1,282.50
6/29/2020	M. Cavanagh	reply brief re MTD	6.5	\$475	\$3,087.50
6/30/2020	M. Cavanagh	reply brief re MTD	3.5	\$475	\$1,662.50
7/1/2020	M. Cavanagh	reply brief re MTD	6.2	\$475	\$2,945.00
7/1/2020	A. Gordon-Seifert	reply brief re MTD	1.8	\$350	\$630.00
7/2/2020	M. Cavanagh	reply brief re MTD	6.9	\$475	\$3,277.50
7/2/2020	A. Gordon-Seifert	reply brief re MTD	1.8	\$350	\$630.00
7/3/2020	M. Cavanagh	reply brief re MTD	3.4	\$475	\$1,615.00
		TOTAL	79.9	\$465	\$37,144.00

Findings/Conclusions and Sealing Issues

<i>Date</i>	<i>Attorney</i>	<i>Task</i>	<i>Hours</i>	<i>Rate</i>	<i>Total</i>
3/2/2020	M. Cavanagh	analyze need for findings/conclusions	1.2	\$475	\$570.00
3/3/2020	M. Cavanagh	analyze findings/conclusions issue	2.8	\$475	\$1,330.00
3/4/2020	M. Cavanagh	review "seal" issues	0.4	\$475	\$190.00
3/10/2020	M. Cavanagh	analyze issues re MMP seeking appeal, sealed record, and findings and conclusions	2.0	\$475	\$950.00
3/11/2020	M. Cavanagh	findings/conclusions	8.3	\$475	\$3,942.50
3/12/2020	M. Cavanagh	findings/conclusions	3.0	\$475	\$1,425.00
3/13/2020	D. Cupar	findings/conclusions	0.8	\$570	\$456.00
3/13/2020	M. Cavanagh	findings/conclusions	2.0	\$475	\$950.00
3/19/2020	M. Cavanagh	redactions/sealed stuff/ protective order	0.8	\$475	\$380.00
3/20/2020	M. Cavanagh	stay district court case/findings	1.8	\$475	\$855.00
3/25/2020	D. Cupar	motion to stay	0.3	\$570	\$171.00
3/25/2020	M. Cavanagh	findings/conclusions	3.0	\$475	\$1,425.00
3/26/2020	M. Cavanagh	issues relating to filings under seal and protective order	0.9	\$475	\$427.50
3/27/2020	M. Cavanagh	issues relating to filings under seal and protective order	0.7	\$475	\$332.50
		TOTAL	28.0	\$479	\$13,404.50

Motion to Dismiss Appeal

<i>Date</i>	<i>Attorney</i>	<i>Task</i>	<i>Hours</i>	<i>Rate</i>	<i>Total</i>
3/30/2020	M. Cavanagh	work on MTD appeal	2.4	\$475	\$1,140.00
3/31/2020	M. Cavanagh	seal issues; motion to dismiss appeal	1.3	\$475	\$617.50
4/3/2020	M. Cavanagh	review notice of appeal; motion to stay	1.5	\$475	\$712.50
5/5/2020	M. Cavanagh	mediation statement to 6th circuit	3.0	\$475	\$1,425.00
5/6/2020	M. Cavanagh	prep for mediation	0.8	\$475	\$380.00
5/13/2020	M. Cavanagh	attend mediation; finish motion to dismiss appeal	4.6	\$475	\$2,185.00
5/21/2020	M. Cavanagh	prepare reply on MTD appeal	1.5	\$475	\$712.50
5/22/2020	M. Cavanagh	MTD appeal	1.8	\$475	\$855.00
5/26/2020	M. Cavanagh	MTD appeal, reply brief	6.0	\$475	\$2,850.00
5/27/2020	M. Cavanagh	MTD appeal, reply brief	5.1	\$475	\$2,422.50
7/15/2020	M. Cavanagh	analyze effect of dismissal on appeal	2.0	\$475	\$950.00
7/28/2020	M. Cavanagh	discuss mediation with 6th circuit mediator	0.6	\$475	\$285.00
		TOTAL	30.6	\$475	\$14,535.00

Fee Motion

<i>Date</i>	<i>Attorney</i>	<i>Task</i>	<i>Hours</i>	<i>Rate</i>	<i>Total</i>
7/16/2020	M. Cavanagh	legal research regarding fee motion	1.8	\$475	\$855.00
7/23/2020	M. Cavanagh	draft fee motion	6.0	\$475	\$2,850.00
7/27/2020	M. Cavanagh	draft fee motion	5.0	\$475	\$2,375.00
7/28/2020	M. Cavanagh	draft fee motion	4.9	\$475	\$2,327.50
8/12/2020	M. Cavanagh	review MMP's opp to fee motion	0.7	\$475	\$332.50
8/17/2020	M. Cavanagh	draft reply brief re fee motion	1.7	\$475	\$807.50
8/18/2020	M. Cavanagh	draft reply brief re fee motion	6.0	\$475	\$2,850.00
9/10/2020	M. Cavanagh	review order and plan fee motion	0.6	\$475	\$285.00
9/21/2020	M. Cavanagh	draft brief re fee amounts	3.8	\$475	\$1,805.00
9/22/2020	M. Cavanagh	draft brief re fee amounts	4.1	\$475	\$1,947.50
9/23/2020	M. Cavanagh	draft brief re fee amounts; assemble exhibits; draft declaration; review and redact invoicing; finalize brief	6.0	\$475	\$2,850.00
		TOTAL	40.6	\$475	\$19,285.00

20. The fees incurred under the Ex Parte Seizure Order phase include the following work necessary to litigate the case:

- Review and analyze MMP's motion for ex parte seizure order and the seizure order itself.
- Perform legal research to identify and develop defenses against seizure order.
- Prepare arguments and witness examinations for ex parte seizure hearing.
- Attend ex parte seizure hearing.

21. The fees incurred under the Motion to Dismiss phase include the following work necessary to litigate the case:

- Review and analyze MMP's complaint.
- Perform legal research regarding the litigation privilege.
- Perform legal research to support arguments seeking dismissal for failure to allege a "misappropriation" and for failure to identify a plausible trade secret.
- Draft motion to dismiss and memorandum in support.

- Review and analyze MMP's opposition to motion to dismiss.
- Read and distinguish caselaw cited in MMP's opposition brief.

22. The fees incurred under the Findings/Conclusions and Sealing Issues phase include the following work necessary to litigate the case:

- Analyze MMP's argument that the Court must issue more detailed findings and conclusions dissolving the seizure order in order for MMP to appeal.
- Analyze and respond to MMP's various arguments and demands with respect to sealing of certain documents and portions of documents on the public record.
- Review MMP's proposed findings and conclusions.
- Review transcript, complaint, hearing exhibit, and other documents to prepare proposed findings and conclusions.
- Draft proposed findings and conclusions.

23. The fees incurred under the Motion to Dismiss Appeal phase include the following work necessary to litigate the case:

- Review MMP's notice of appeal.
- Perform legal research regarding the appealability of interlocutory orders dissolving seizure orders.
- Draft mediation statement to Sixth Circuit.
- Attend mediation before Sixth Circuit.
- Draft motion to dismiss appeal.
- Review and analyze MMP's opposition to motion to dismiss.
- Read and distinguish caselaw cited in MMP's opposition brief.

- Draft reply brief in support of motion to dismiss appeal.

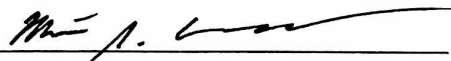
24. The fees incurred under the Fee Motion phase include the following work necessary to litigate the case:

- Perform legal research regarding legal standards for obtaining fee award under trade secret acts and 28 USC § 1927.
- Review prior filings and case record to identify factual basis for fee motion.
- Draft motion for fee award.
- Review and analyze MMP's opposition to motion for fee award.
- Draft reply brief in support of motion for fee award.
- Review Court's order awarding fees.
- Draft brief on amount of fees to award.

25. In total, Terves incurred \$92,111 in reasonable attorneys' fees for which it seeks recovery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 23, 2020.


Matthew J. Cavanagh